

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

FILED

JUN 27 2007

UNITED STATES OF AMERICA,

v.

Case No. 2:07MJ19

U.S. DISTRICT COURT
CLARKSBURG, WV 26301

TERRY PHILLIPS
ROBERT P. SMITH,
Defendants.

ORDER/OPINION

On June 26, 2007, came the United States by Shawn Angus Morgan, its Assistant United States Attorney, Defendant Terry Phillips, in person and by his counsel Stephen Jory, and Defendant Robert P. Smith, in person and by his counsel, Joseph A. Wallace, for a preliminary hearing on the criminal complaint filed against both Defendants on June 21, 2007.

After determining Terry Phillips and Robert P. Smith had received, read, and had the opportunity to review and discuss the charges contained in the criminal complaint with their respective counsel, the Court proceeded to hear evidence presented by the United States in the form of the sworn testimony of Gregory R. Perry, Special Agent with the Bureau of Alcohol, Tobacco, Firearms, and Explosives. The Court also received and admitted Government Exhibits 1A and B

Upon consideration of the evidence presented and in accord with the oral findings made by the Court on the record of the hearing, the Court finds there is probable cause to believe that:

On or about May 7, 2007, at or near Elkins, Randolph County, West Virginia, in the Northern District of West Virginia, the defendant, **TERRY PHILLIPS**, a licensed dealer, aided and abetted by defendant **ROBERT P. SMITH**, did unlawfully sell and deliver a firearm, other than a shotgun or rifle, to an undercover Special Agent with the Bureau of Alcohol, Tobacco, Firearms, and Explosives who he, as the licensee, knew and had reasonable cause to believe was not a resident of West Virginia; in violation of Title 18, United States Code, § 922(b)(3) and 2.

It is therefore **ORDERED** that Terry Phillips and Robert P. Smith be bound over for proceedings before a Grand Jury attending the United States District Court for the Northern District of West Virginia.

The Clerk shall direct copies of this order to counsel for the United States, to counsel for the defendant, to the United States Marshal, and to the United States Probation Officer.

DATED this *27* day of June, 2007.

A handwritten signature in black ink, appearing to read "John S. Kaul", written in a cursive style.

JOHN S. KAULL
UNITED STATES MAGISTRATE JUDGE